

DOCKET FILE COPY ORIGINAL TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

EB DOCKET NO. 04-28

J. COMMUNICATIONS CO., LTD.

APR 21 3 07 PM '04
FCC-0ALJ RCD

DATE OF HEARING: APRIL 7, 2004

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Before the
Federal Communications Commission
Washington, D.C. 20554

Pre-Hearing Conference

IN THE MATTER OF:

J. COMMUNICATIONS CO., LTD.

Grantee of Equipment
Authorization for
General Mobile Radio
Service Radios,
FCC ID# OAJFRI-GPS

EB Docket 04-28

EB-02-TS-588

FRN #0005-8369-60

Wednesday, April 7, 2004

Hearing Room TWA-363
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 a.m.

BEFORE:

THE HONORABLE ARTHUR I. STEINBERG

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APPEARANCES:

On behalf of the Federal Communications
Commission:

GARY OSHINSKY, ESQ.
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
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I-N-D-E-X

WITNESS DIRECT CROSS REDIRECT RECROSS

Katherine Berthot
By Judge Steinberg 9

JUDGE'S EXHIBITS IDENTIFIED RECEIVED

1	Letter from J Communications to FCC dated 2/12/2004	6	7
2	Letter from FCC to J Communications dated 2/17/2004	7	7

Start Time: 9:03 a.m.

End Time: 9:12 a.m.

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P-R-O-C-E-E-D-I-N-G-S

9:03 a.m.

JUDGE STEINBERG: We're on the record now.

This is a pre-hearing conference in EB Docket No. 04-28, which was designated for hearing by Order to Show Cause FCC 04-24 released February 9th, 2004.

The issues in this proceeding seek to determine whether certain radios manufactured by J Communications Company, Limited, pursuant to an FCC equipment certification violate the Commission's rules and/or the explicit terms of the equipment authorization and whether this equipment authorization should be revoked. By order, FCC 04M-07 released February 12th, 2004, the chief administrative law judge assigned this case to me and scheduled the initial prehearing conference for this morning.

Let me first take the appearances for the parties. For J Communications Company, Limited? Let the record reflect no response.

And for the Chief Enforcement Bureau?

MR. OSHINSKY: Your Honor, for the Enforcement Bureau, Gary Oshinsky.

JUDGE STEINBERG: Okay. Thank you. You don't have to stand.

MR. OSHINSKY: Oh, okay.

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1 JUDGE STEINBERG: This is 9:00 in the
2 morning.

3 MR. OSHINSKY: It's too early for that.

4 JUDGE STEINBERG: Yes, it's too early for
5 respect.

6 MR. OSHINSKY: Although we have plenty of
7 it.

8 JUDGE STEINBERG: Thank you. Thank you.
9 Let me just note for the record that William D.
10 Freedman is here sitting in the audience. I always
11 like to acknowledge those sitting in the audience or
12 famous people and notorious and things like that and
13 Bill certainly is famous and notorious.

14 MR. FREEDMAN: Thank you, Your Honor.

15 MR. OSHINSKY: Your Honor, this is Ms.
16 Kathy Berthot, if I'm pronouncing it correctly.

17 MS. BERTHOT: That's correct.

18 JUDGE STEINBERG: B-E-R-T-H-O-T, right?

19 MS. BERTHOT: Yes.

20 MR. OSHINSKY: Right. And she is from the
21 Spectrum Enforcement Division of the Enforcement
22 Bureau.

23 JUDGE STEINBERG: I think we spoke very
24 early on in this case and I was going to acknowledge
25 you next, but you're not as notorious as Mr. Freedman,

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1 so he deserves special mention and perhaps you can --
2 perhaps the reporting company could put his name on in
3 all caps.

4 Okay. Back to the serious business at
5 hand. The Order to Show Cause was mailed to J
6 Communications by registered mail, return receipt
7 requested. And let me ask Mr. Oshinsky if there's any
8 record that the Commission received the return
9 receipt?

10 MR. OSHINSKY: Your Honor, there's no
11 indication in our records that we did receive the
12 return receipt.

13 JUDGE STEINBERG: Okay. We discussed this
14 a little bit before we went on the record, but you do
15 have evaluation that J Communications did in fact
16 receive the Show Cause?

17 MR. OSHINSKY: Yes, Your Honor. We
18 received a letter. Ms. Berthot received a letter
19 indicating that the Order to Show Cause was received
20 by J Communications and in fact acknowledging receipt
21 in so many words.

22 JUDGE STEINBERG: Okay. And then before
23 the prehearing conference you gave me two documents
24 and one appears to be on the letterhead of J
25 Communications which is located in Korea and it's to

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1 the FCC, attention Kathy Berthot dated February 12,
2 2004. And then there was a response by Ms. Berthot
3 dated February 17th on FCC letterhead.

4 I think the document from J Communications
5 will show that they did receive the Order to Show
6 Cause. In fact, they stated they have received it.

7 What I'm going to do is, is this is kind
8 of unusual for a prehearing conference, but I'm going
9 to mark these two documents as exhibits. And you want
10 to do Enforcement Bureau exhibits or I'll make them a
11 judge's exhibit.

12 MR. OSHINSKY: Making them judge's
13 exhibits, Your Honor.

14 JUDGE STEINBERG: Okay. Makes me feel
15 important to have my own exhibits. Okay. Judge's
16 Exhibit 1 is a one-page document. It looks like a
17 fax. It says JCOM at the top with a little logo there
18 and it's faxed to the FCC dated February 12th, 2004.
19 That would be identified as Judge's Exhibit 1.

20 (Whereupon, the document was
21 marked as Judge's Exhibit 1 for
22 identification.)

23 JUDGE STEINBERG: And Judge's Exhibit 2
24 will be identified. It's a one-page exhibit on the
25 letterhead of the Federal Communications Commission to

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1 J Communications dated February 17, 2004 and it's
2 signed by Joseph P. Casey.

3 (Whereupon, the document was
4 marked as Judge's Exhibit 2 for
5 identification.)

6 JUDGE STEINBERG: And I presume there's no
7 objection to receiving these?

8 MR. OSHINSKY: No, Your Honor.

9 JUDGE STEINBERG: Okay. So Judge's
10 Exhibits 1 and 2 are received.

11 (Whereupon, the documents
12 marked as Judge's Exhibits 1
13 and 2 were received in
14 evidence.)

15 JUDGE STEINBERG: This also is unusual.
16 Ms. Berthot, why don't you just sit up here and I'm
17 going to swear you in and then Mr. Oshinsky can ask
18 you what these two documents are and then that way
19 we'll have sworn testimony and I don't think there
20 will be any problem.

21 Let me give you Judge's Exhibits 1 and 2.

22 MS. BERTHOT: I have copies of them.

23 JUDGE STEINBERG: Oh, you have them?

24 MS. BERTHOT: Yes.

25 JUDGE STEINBERG: Okay. So, could you

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1 raise your right hand please?

2 KATHERINE BERTHOT

3 was called as a witness and having been first duly
4 sworn, assumed the witness stand and was examined and
5 testified as follows:

6 JUDGE STEINBERG: State your name please?

7 THE WITNESS: Katherine Berthot.

8 JUDGE STEINBERG: And your position at the
9 FCC?

10 THE WITNESS: I'm deputy Chief of the
11 Spectrum Enforcement Division of the Enforcement
12 Bureau.

13 JUDGE STEINBERG: Okay. Thank you. Could
14 you look at Judge's Exhibit 1.

15 You want to ask the questions, Mr.
16 Oshinsky?

17 MR. OSHINSKY: I'll defer to the Court.

18 JUDGE STEINBERG: Okay.

19 MR. OSHINSKY: Whichever you prefer.

20 JUDGE STEINBERG: Because I mean I'm out
21 of practice. It's been so long since I asked
22 questions other than, you know, "Where's the
23 bathroom," or something like that. But anyway --

24 MR. FREEDMAN: It's like riding a bike.

25 JUDGE STEINBERG: -- in a strange

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1 building. What?

2 MR. FREEDMAN: It's like riding a bike.

3 JUDGE STEINBERG: Oh, thank you. Thank
4 you, Mr. Freedman.

5 Could you look at Judge's Exhibit 1 and
6 tell us what that is?

7 THE WITNESS: This is a facsimile we
8 received from J Communications on February 12th, 2004.
9 They indicate in the fax that they received the Order
10 to Show Cause and they asked a few questions
11 concerning the order.

12 JUDGE STEINBERG: Okay. And it's directed
13 to your attention, the fax is?

14 THE WITNESS: Yes.

15 JUDGE STEINBERG: And you did receive it?

16 THE WITNESS: Yes, I did.

17 JUDGE STEINBERG: Did there come a time
18 when you responded to it?

19 THE WITNESS: Yes, I did.

20 JUDGE STEINBERG: And is that what Judge's
21 Exhibit 2 is?

22 THE WITNESS: Yes. I prepared Judge's
23 Exhibit for a letter dated February 17, 2004, which
24 responds to the questions, questions asked by J
25 Communications in Judge's Exhibit 1. I prepared this

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1 letter for Joe Casey's signature.

2 JUDGE STEINBERG: Okay. And then the
3 letter came from the files of the Commission?

4 THE WITNESS: Yes.

5 JUDGE STEINBERG: Okay. Anything you want
6 to ask, Mr. Oshinsky?

7 MR. OSHINSKY: No, Your Honor. Nothing
8 further.

9 JUDGE STEINBERG: Anything you want to
10 add?

11 THE WITNESS: No.

12 JUDGE STEINBERG: Okay. Based upon
13 Judge's Exhibits 1 and 2 and the testimony, it's
14 pretty clear to me this is overkill. It's pretty
15 clear to me that the Order to Show Cause was received
16 by J Communications.

17 Section 1.91(c) of the Commission's rules,
18 as well as paragraph 8 of the Order to Show Cause
19 require J Communications to file a written appearance
20 stating that it will appear at the hearing and present
21 evidence on the specified issues.

22 Pursuant to paragraph 8 of the Order to
23 Show Cause, the written appearance was required to be
24 filed within 30 days of the release of the Order to
25 Show Cause. And since the Order to Show Cause was

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1 released on February 9th, 2004, the Notice of
2 Appearance was due to be filed on or before March
3 10th, 2004.

4 I've got no record of a Notice of
5 Appearance being filed. Have you seen any such
6 document?

7 MR. OSHINSKY: No, Your Honor, no
8 indication.

9 JUDGE STEINBERG: Ms. Berthot?

10 THE WITNESS: No.

11 JUDGE STEINBERG: Okay. Given those
12 circumstances, under Section 1.92(a)(1) of the
13 Commission's rules and paragraph 8 of the Order to
14 Show Cause, the failure to file a Notice of Appearance
15 constitutes a waiver of the right to a hearing and
16 therefore, under Section 1.92(c) of the rules and
17 paragraph 8 of the Order to Show Cause, I will issue
18 an order citing the events or circumstances
19 constituting the waiver. I'll terminate the
20 proceeding and certify this case to the Commission for
21 disposition.

22 Any comments on any of that?

23 MR. OSHINSKY: No, Your Honor. We believe
24 that the Court's proposed action is appropriate.

25 JUDGE STEINBERG: Okay. Any reason why we

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1 shouldn't conclude the conference now?

2 MR. OSHINSKY: No, Your Honor.

3 JUDGE STEINBERG: Okay. Then we'll
4 conclude the conference and I'll issue the order when
5 I want. Okay. We'll go off the record now. Thank
6 you.

7 (Whereupon, the hearing was concluded at
8 9:12 a.m.)

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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

J. COMMUNICATIONS CO., LTD.

Name of Hearing

EB DOCKET NO. 04-28

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

APRIL 7, 2004


Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 13, inclusive, are the true, accurate and complete transcript prepared from the reporting by

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April 21, 2004

John Mongoven



Date

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Name of Company: Neal Gross Co.

April 21, 2004

Judy Hadley



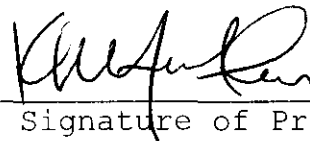
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